

1 BRAD D. BRIAN (SBN 79001)  
brad.brian@mto.com  
2 ROHIT K. SINGLA (SBN 213057)  
rohit.singla@mto.com  
3 VICTORIA A. DEGTYAREVA (SBN 284199)  
Victoria.Degtyareva@mto.com  
4 MUNGER, TOLLES & OLSON LLP  
350 South Grand Avenue, Fiftieth Floor  
5 Los Angeles, California 90071-3426  
Telephone: (213) 683-9100  
6 Facsimile: (213) 687-3702

7 ALEC KARAKATSANIS\*  
alec@civilrightscorps.org  
8 SHIRLEY LAVARCO\*  
shirley@civilrightscorps.org  
9 CIVIL RIGHTS CORPS  
1601 Connecticut Avenue NW, Suite 800  
10 Washington, D.C. 20009  
Telephone: (202) 844-4975  
11 Facsimile: (202) 609-8030

12 DAN STORMER (SBN 101967)  
dstormer@hadsellstormer.com  
13 BRIAN OLNEY (SBN 298089)  
bolney@hadsellstormer.com  
14 HADSELL STORMER RENICK & DAI LLP  
128 N. Fair Oaks Avenue  
15 Pasadena, California 91103  
Telephone: (626) 585-9600  
16 Facsimile: (626) 577-7079

17 [Additional Counsel Listed on Last Page]

18 *Attorneys for Plaintiffs*

19 *\*Pro Hac Vice applications forthcoming*

20  
21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

22 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

23 Phillip Urquidi, Daniel Martinez, Susana  
Perez, Terilyn Goldson, Gerardo Campos, and  
24 Arthur Lopez, ~~on behalf of themselves and all~~  
~~other similarly situated,~~ and Clergy and Laity  
25 United for Economic Justice ("CLUE"),  
Reverend Jennifer Gutierrez, Reverend Gary  
26 Williams, and Rabbi Aryeh Cohen,  
individually,

27 Plaintiffs,

28 vs.

**FILED**  
Superior Court of California  
County of Los Angeles

**NOV 14 2022**

Sherri R. Carter, Executive Officer/Clerk of Court  
By C. Grijalva Deputy  
Cristina Grijalva

LESLIE A. BAILEY (SBN 232690)  
lbailey@publicjustice.net  
BRIAN HARDINGHAM (SBN 288773)  
bhardingham@publicjustice.net  
PUBLIC JUSTICE  
475 14<sup>th</sup> St., Ste. 610  
Oakland, CA 94612  
Telephone: (510) 622-8150

Case No.

**22STCPO4044**  
DECLARATION OF CHRISTINE S.  
SCOTT-HAYWARD, Ph.D.

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City of Los Angeles, Los Angeles County, Los Angeles County Sherriff's Department, Sheriff Alex Villanueva, Los Angeles Police Department, and Chief Michel R. Moore,

Defendants.

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DECLARATION OF CHRISTINE S. SCOTT-HAYWARD, PH.D.

I. Background and Qualifications

1. My name is Christine Sarah Scott-Hayward. I am currently a tenured Associate Professor and Director of the School of Criminology, Criminal Justice, and Emergency Management at California State University, Long Beach (CSULB). Counsel for Plaintiffs in this case have asked me to provide my expert opinion on the effectiveness of secured money bail and the consequences of pretrial detention.
2. I am being compensated at a rate of \$175 per hour for my preparation and testimony in this case. I have not previously testified as an expert.
3. I earned a master's degree in Social Sciences from the University of Chicago in 2000, and a Ph.D. in Law and Society from New York University in 2011. I graduated with a First Class Honors Bachelor of Civil Law (International) from University College Dublin (Ireland) in 1999. I have been licensed to practice law in the state of New York since 2006.
4. Since 2019, I have been a tenured Associate Professor at CSULB. I was an Assistant Professor at CSULB from 2013 to 2019. In 2022, I was appointed Director of the School of Criminology, Criminal Justice, and Emergency Management. During the 2016-2017 academic year, I was on leave, serving as a Supreme Court Fellow assigned to the United States Sentencing Commission.
5. Prior to joining CSULB, from 2011 to 2013, I was an Associate in Law and Post-Doctoral Research Fellow at Columbia Law School. Previously, from 2006 to 2009, I worked, first as a Research Assistant and then as a Research Associate, at the Vera Institute of Justice, where I conducted empirical research on a variety of criminal justice issues.
6. I have more than 20 years of experience conducting social science research on criminal justice and criminal procedure topics. Informed by my interdisciplinary law and society background, my research examines the practical implications of criminal laws and policies.
7. My recent research has primarily focused on pretrial justice and sentencing. In the area of bail and pretrial justice, since 2016, I have conducted two separate empirical studies. The first, "Pretrial detention and the decision to impose bail in Southern California," conducted with then M.S. student Sarah Ottone, examined the imposition of bail in state courts in Southern California and was published in *Criminology, Criminal Justice, Law and Society*, a peer-reviewed journal (Ottone & Scott-Hayward, 2018). Relying primarily on court observations, we found that county

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bail schedules were the most important factor considered by judges, and that bail was usually set without regard to the defendant's ability to pay.

8. A second study, "Reducing the federal prison population: The role of pretrial community supervision" was published in the *Federal Sentencing Reporter*, a peer-reviewed journal, earlier this year (Scott-Hayward & Ireland, 2022). This study was a qualitative analysis of federal sentencing hearings in the Central District of California conducted with a colleague, Dr. Connie Ireland. We found that performance on pretrial supervision played a mitigating role at sentencing.
9. In addition to these two studies, I have published two books in the field of bail and pretrial justice. First, I am the first author of *Punishing Poverty: How Bail and Pretrial Detention Fuel Inequalities in the Criminal Justice System* (UC Press, 2019). This is a peer-reviewed book co-authored with Dr. Henry F. Fradella. Second, I am the lead editor of the *Handbook on Pretrial Justice* (Routledge, 2022) co-edited with Drs. Stephen Demuth and Jennifer Copp. I have also written four refereed articles and a book chapter on bail and pretrial justice issues. These publications as well as my other published research and professional activities are included in my curriculum vitae, which is attached as Appendix A.

## II. Material Reviewed & Methodology

10. Attached as Exhibit B is a list of the materials that I reviewed in preparing this report. The materials include journal articles, book chapters, and reports. These materials were selected by conducting a comprehensive literature review. This is the standard methodology in the social sciences used to identify empirical research studies in a particular area. Conducting a literature review is an iterative process that involves searching a variety of academic databases as well as reviewing previously published articles, reports, and reviews to identify relevant studies.
11. For this report, given my expertise in, and numerous publications on, the topic of bail and pretrial justice, I began with articles and reports previously identified while conducting the literature reviews for my prior publications. I supplemented this by conducting updated searches in a variety of scholarly databases, including Criminal Justice Abstracts, Google Scholar, SSRN, and Westlaw to ensure that no relevant articles were missed. Only relevant, methodologically sound publications are included in the report, primarily peer reviewed articles that have been subject to double-blind peer review. However, there also exist methodologically rigorous studies not published as peer reviewed journal articles; these include peer reviewed book chapters, empirical research articles published in law reviews where at least one author has a Ph.D., government reports, and reports published by reliable research organizations. The most rigorous quantitative studies are randomized controlled trials, which are relatively uncommon in this field. The next most reliable

are quasi-experimental studies, some of which take advantage of natural experiments, such as random assignment of judges. In addition, quantitative studies that utilize reliable multivariate analysis techniques are also considered rigorous and allow the researchers to make causal connections. All these study types typically rely on high-quality, rigorous methods that control for other relevant factors that might be expected to impact the bail decision and other case outcomes; these include offense type, charge severity, and criminal history. When variables like these are controlled for, or held constant, the researcher(s) can assess the effect of the independent variable (for example, pretrial detention) on the dependent variables (for example, type of sentence) and be confident that another variable (for example, severity of the charge), is not causing the effect. Finally, qualitative studies, government data, and secondary research are included where they address the questions asked.

12. The opinions expressed below are based on my review of these studies as well as the knowledge of bail and pretrial justice systems that I have gained through my own research and writing of the publications described above and listed in my CV.

### III. Questions Presented

13. I have been asked to express opinions on the following questions, each of which I will address separately, below.
  - A. Does the use of secured money bail, as opposed to unsecured or non-monetary conditions of release, result in increased pretrial detention by causing fewer defendants to be released pretrial and/or by delaying when defendants are released pretrial?
  - B. Does pretrial detention for time periods of more than 24 hours negatively affect detained individuals' criminal case outcomes?
  - C. Does pretrial detention for time periods of more than 24 hours have other adverse effects on detained individuals and the community?
  - D. Does pretrial detention for time periods of more than 24 hours have an adverse effect on the likelihood that a person will remain law-abiding or make their court appearances while on pretrial release?
  - E. Is there any empirical evidence that secured money bail is more effective than unsecured money bail or non-monetary conditions of release at assuring public safety and law-abiding behavior?
  - F. Is there any empirical evidence that secured money bail is more effective than unsecured money bail or non-monetary conditions of release at assuring appearance in court?
  - G. In Los Angeles County, is the bail schedule an important factor considered by judges when they are determining pretrial release conditions at arraignment?

**IV. Opinion A: Secured money bail results in higher rates of pretrial detention.**

14. Based on the empirical research addressing this specific question, it is my opinion that the use of secured money bail (where the defendant is required to post payment prior to being released) results in higher rates of pretrial incarceration. This opinion is based on the fact that most people who are detained pending trial are there because they cannot afford to pay the money bail that has been set in their case. In 2009, just 4% of defendants in the seventy-five largest counties in the United States who were detained until their cases ended were denied bail outright while 34% were held on financial bail (Reaves, 2013). This means that the vast majority of those who were detained had money bail set in their case, likely could not afford to pay it, and thus remained in pretrial detention for the duration of the case process. More recently, in my own research in Southern California, we found that although just 4.3% of defendants whose arraignments we observed were denied bail outright (with secured money bail set in 87.1% of cases), 78% of defendants remained in custody at the conclusion of our study or had been in custody for the duration of their cases (Ottone & Scott-Hayward, 2018).
15. Recent national data are unavailable but in 2009, the median bail amount in the seventy-five largest counties in the United States was \$10,000 (Reaves, 2013). This amount represents eight months of income for the typical detained defendant (Prison Policy Initiative, 2016). Data from specific jurisdictions demonstrate that even when bail amounts are lower, most defendants are still unable to pay. For example, in New York City in 2010, even when bail was set at \$500 or lower, fewer than a quarter of defendants were able to pay (Phillips, 2012). Similarly, a 2016 survey of a sample of defendants held pretrial in three states found that more than half of defendants who had not posted and did not plan on posting bond stated that the reason for this was that they could not afford it (Kimbrell & Wilson, 2016). These numbers are not surprising given that judges rarely consider defendants' ability to pay when setting bail amounts (Ottone & Scott-Hayward, 2018).<sup>1</sup> Moreover, most Americans do not have significant savings and almost one-third lack the ability to pay for an emergency \$400 expense with cash or its equivalent (Board of Governors of the Federal Reserve System, 2022).
16. Further, jurisdictions that have eliminated or substantially restricted the use of money bail have seen reductions in pretrial detention. For example, in 2017 New Jersey's comprehensive bail reform legislation, which virtually eliminated money bail, replacing it with release on recognizance (ROR) or pretrial monitoring, went into effect. The pretrial jail population decreased 8.7% between January 1, 2017 and December 31, 2021 (New Jersey Courts, 2022). Similarly, in Harris County, Texas, as

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<sup>1</sup> Note. This study was conducted in Los Angeles and Orange counties prior to the 2021 California Supreme Court decision in *In re Humphrey*, which held that courts must consider an individual's ability to pay when setting bail. As yet, there are no studies examining the extent to which judges have changed their practices.

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a result of the injunction issued in the *ODonnell* case, beginning in April 2017, courts were required to release most individuals who signed an affidavit saying that they were unable to pay the required bail amount. A recent analysis of data shows that this change led to a 13% increase in the share of misdemeanor defendants released within 24 hours (Heaton, 2022).

V. **Opinion B: Pretrial detention for time periods of more than 24 hours negatively affects detained individuals' criminal case outcomes.**

17. It is my opinion that pretrial detention for periods of more than 24 hours has serious adverse impacts on detained persons' criminal case outcomes. This opinion is based on decades of empirical research, in a variety of jurisdictions, demonstrating that compared with people who are released while awaiting trial, detained people are more likely to be convicted, more likely to plead guilty, less likely to receive charge reductions, and more likely to receive a sentence of incarceration (Phillips, 2012; Scott-Hayward & Fradella, 2019). This research typically controls for factors that might be expected to impact these outcomes, including offense type, charge severity, and criminal history. This means that if we compare two people, charged with similar felony offenses who have similar criminal histories, the one who is detained will have worse case outcomes than the one who is released, purely because of the fact of detention. While the minimum length of time spent in detention varies among the studies (with periods of 24 hours, 3 days, 7 days, and detention for the duration of the case the most common) the findings are consistent.

Convictions, Guilty Pleas, and Charge Reductions

18. Over the last five years, four studies have been conducted that confirm earlier findings that pretrial detention is associated with higher rates of convictions, guilty pleas, and charge reductions. These studies, which rely on data from Philadelphia, Pennsylvania, Harris County, Texas, Miami-Dade County, Florida, and New York City, are rigorous, quasi experimental studies, relying on natural experiments in these jurisdictions that allow causal comparisons that isolate the role played by pretrial detention. For example, Stevenson (2018) relied on the random assignment of cases to judges in Philadelphia to analyze over 300,000 cases, both felonies and misdemeanors, that originated between 2006 and 2013. She found that, controlling for a wide variety of demographic and offense characteristics, being detained pretrial for a minimum of three days led to a 13% increase in the likelihood of conviction, mostly because detained defendants, who otherwise would have been acquitted or had their charges dropped, plead guilty.

19. In a second study of pretrial detention, this time in Harris County, Texas, Heaton and colleagues (2017) examined more than 380,000 misdemeanor cases filed between

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2008 and 2013 Using rigorous regression analyses that account for differences in initial bail amount, offense seriousness, criminal history, and demographic information between released and detained defendants, they found that defendants held in pretrial detention for at least seven days were 25% more likely to plead guilty than similarly situated defendants who were released pretrial. The authors also conducted a quasi-experimental analysis based on the day of the week that bail was set, which confirmed these findings.

20. Similarly, Dobbie and colleagues (2018), conducted a study of over 400,000 defendants charged between 2006 and 2014 in Philadelphia County, Pennsylvania, and Miami-Dade County, Florida. Using a quasi-experimental design that took advantage of random judge assignment, and again controlling for case-related and demographic characteristics, they found that defendants released pretrial were 10.8% less likely to plead guilty than those who were detained pretrial for at least three days. The benefits to pretrial release were greater for defendants with no recent criminal history. The authors also found that those released pretrial received more favorable plea offers than those detained pretrial: people released were more likely to be convicted of a lesser charge and were charged with fewer total offenses.
21. Finally, again taking advantage of random judge assignment, Leslie and Pope (2017) analyzed 973,815 defendants in New York City from 2009 to 2013 and found that, controlling for demographic factors and criminal history, pretrial detention for the duration of the case increased the likelihood of conviction, primarily by inducing guilty pleas, by over 13 percentage points. They also found that detained individuals charged with a felony offense were 10 percentage points less likely to obtain a charge reduction.
22. The findings that pretrial detention leads to more convictions is not surprising. Given the deprivation of liberty and the conditions of confinement experienced by pretrial detainees, “detention itself creates enough pressure to increase guilty pleas” (Phillips, 2012). And indeed, it appears to incentivize *early* pleading. A study by Nick Petersen (2021) found that, controlling for the seriousness of the offense and the number of charges filed, pretrial detainees (those who were detained until adjudication) plead guilty 2.86 times faster than released defendants. This makes sense given that pleading guilty to a time-served sentence is the quickest way to secure release for defendants who are unable to make bail. (Chevrier, 2021).

### Sentencing

23. For those who plead guilty or are convicted at trial, research shows that pretrial detention affects both the likelihood of being sentenced to jail or prison and the length of the sentence imposed. In part this is because detained defendants are unable to engage in activities that build a strong mitigation case at sentencing. Unlike detained defendants, defendants who are released pending trial can show

rehabilitation: for example, they can demonstrate to a judge that they have been able to maintain a job, stay out of trouble, and support their dependents (Scott-Hayward & Ireland, 2022). In addition, it appears that it is much more difficult to build and participate in your defense if you are behind bars, in part because of “decreased access to defense attorneys [and] barriers to gathering and reviewing evidence” (Chevrier, 2021).

24. Research conducted over the last two decades in a variety of jurisdictions clearly demonstrates that people who are detained pending trial are more likely to be sentenced to jail or prison than those who are not detained (or who are released before trial). For example, in an analysis of more than 153,000 cases from Kentucky in 2009-10, Lowenkamp and colleagues (2013a) found that people detained for the entire pretrial period were 4.44 times more likely to be sentenced to jail and 3.32 times more likely to be sentenced to prison than defendants who were released from pretrial custody at some point prior to trial. A recent follow-up study using data from 2009 to 2018 confirmed these earlier findings (Arnold Ventures, 2022). Similarly, a study of federal cases that closed in 2010-11 found that, controlling for offense severity and criminal history, pretrial detention significantly increased the likelihood of receiving a prison sentence (Oleson, et al. 2017).
25. More recently, Johnson and Larroulet (2019) examined the impact of pretrial detention on sentencing for more than 20,000 defendants sentenced in New York County in 2010-11. They found that defendants who were detained at arraignment had a 45% higher probability of being sentenced to jail or prison than released defendants. Similarly, Campbell and colleagues (2020) used propensity score matching, a quasi-experimental design, to compare outcomes for detained and released defendants. They found that those who were fully detained through their disposition, were more than twice as likely to be sentenced to prison than those who were released. Moreover, even detention for a short period of time led to a significant increase in the likelihood of incarceration. Those released on the same day they were arrested had a 3.99% chance of incarceration compared with 14.7% for those detained for 1-5 days.
26. Research also clearly shows that pretrial detention leads to *longer sentences*. For example, two studies of sentencing decisions in various Florida counties in the 1990s found that defendants who were detained pretrial were between four and 10 times more likely to receive an incarceration sentence than those released before trial (Tartaro & Seidelmaier, 2009; Williams, 2003). Similarly, a small study of pretrial detention decisions in 21 counties in New Jersey in 2004 found that pretrial detention resulted in longer incarceration sentences. Similarly, the NYCJA’s review of bail research in New York found that the number of days spent in pretrial detention had a statistically significant effect on sentence length, particularly among felony cases (Philips, 2012). In Kentucky, in cases from 2009-10, among those sentenced to incarceration, the jail sentence was 2.78 times longer for defendants

who are detained for the entire pretrial period, and the prison sentence was 2.36 times longer (Lowenkamp, et al. 2013a).

27. Three of the recent quasi-experimental studies by economists provide support for these earlier findings by criminologists. First, Megan Stevenson (2018) found that pretrial detention in Philadelphia led to a 42% increase in the length of the incarceration sentence. In addition, she found that defendants who were detained were required to pay an additional \$129 in non-bail court fees, 42% more than released defendants. Second, Paul Heaton and colleagues (2017) reported that for misdemeanor defendants detained pretrial who were sentenced to jail, on average, their sentence was nine days longer than, more than double the sentence length of, those released pretrial. Finally, Stephanie Holmes Didwania (2020) found similar results among federal defendants, showing that pretrial release reduced an individual's sentence length by about 67%. She also reported that released defendants were more likely to receive shorter sentences than those recommended by the U.S. Sentencing Guidelines, and more likely to receive "substantial assistance" reductions.

VI. **Opinion C: Pretrial detention for time periods of more than 24 hours negatively affects detained individuals and the community.**

28. In addition to the significant negative impacts that pretrial detention has on case outcomes, it is my opinion that pretrial detention for time periods of more than 24 hours has other negative impacts – on defendants, their families, and the community – particularly in the areas of health, financial well-being, and community safety.

Health Consequences

29. It is my opinion that pretrial detention has adverse health consequences for detained people. As described below, not only do detained people suffer higher rates of mental illness, substance dependence, and physical and chronic health conditions than the general population, but they are less likely to receive adequate treatment (Novisky & Semenza, 2021). In addition, people in jail have higher death rates than the national average (Reilly & Liebelson, 2016).
30. *Mental Illness.* According to a survey conducted in 2011 and 2012 by the Bureau of Justice Statistics, about one in four people in jail reported having had in the past 30 days "experiences that met the threshold for serious psychological distress" (Bronson & Berzofsky, 2017). Moreover, 44% reported that they had previously been diagnosed with a mental health disorder, most commonly a major depressive disorder. These rates are higher than the rates for those in prison and the general population (Novisky & Semenza, 2021). Despite these rates, most jails do not

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provide adequate care. In 2015, the Vera Institute of Justice reported that “83% of jail inmates with mental illness did not receive mental health care after admission” (Subramanian, et al., 2015).

31. *Physical Health & Substance Use:* In addition to mental health issues, many people in jail suffer from physical health issues, including chronic conditions and infectious diseases. In 2011-12, about 45% of people in jail reported ever having had a chronic illness, most commonly high blood pressure, asthma, arthritis, and heart problems (Maruschack, et al., 2015). That same survey found that about 14% of people in jail reported having ever had an infectious disease, most often, hepatitis. Rates of substance use dependence are even higher, with about two-thirds of those in jail reporting drug dependence or abuse (Bronson, et al., 2017).
32. *Death:* In addition to these health problems, people detained or incarcerated in jails have higher death rates than the national average (Reilly & Liebelson, 2016) with suicide being the leading cause of death in jails between 2006 and 2016, the most recent year for which data were available (Carson & Cowhig, 2020). Although these data, like most jail data, do not differentiate among sentenced people and people detained pretrial, the average victim of suicide has been in custody for fewer than seven days, and so “a large proportion of suicides are likely carried out by pretrial detainees” (Ncvisky & Semenza, 2021). One study estimated that the suicide rate among people awaiting trial in jail is seven and a half times higher than the general population (Jenkins, et al. 2005).
33. The empirical research on the impact of incarceration on family members and communities suggests that pretrial incarceration likely also negatively affects the families of detained people. A recent South Carolina study examined the impact of incarceration on family members who visited their loved ones by looking at official state data on those family members. The researchers found that the family members were at significantly higher risk of physical and mental health disorders before and during the incarceration of their family member than after this incarceration. The authors suggest that arrest and incarceration “are stressors that create or exacerbate” the health problems of family members (DeHart, et al., 2017). These quantitative findings were confirmed through qualitative interviews and focus groups with incarcerated people and their family members. A common theme was the presence of increased stress, which was often perceived as a contributor to other mental health problems such as substance use and depression, and to physical health problems, such as high blood pressure (DeHart, et al., 2018). Although more research is needed, particularly to assess whether these outcomes exist for people incarcerated in jails as well as prison, this line of research suggests that the stress of incarceration has adverse health consequences for the family members of detained people.

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## Financial Wellbeing

34. Because pretrial detention, even for a few days, can cause people to lose their jobs, it is my opinion that pretrial detention negatively impacts a person's financial well-being. A 2016 study of defendants then under bond supervision in Johnson County, Missouri found that those who spent three or more days in jail were nearly 2.5 times less likely to be employed compared with those who had spent less than three days in jail (Holsinger, 2016). Similarly, in their survey of defendants detained pretrial in three states, Kimbrell and Wilson (2016) found that a major concern for those defendants was job loss: 84% of respondents who reported that they were employed prior to arrest indicated that they might lose their job as a result of being incarcerated. As explained earlier, those who are detained are most often among the poorest members of society, and thus likely to be among those without the ability to rely on savings to offset lost income and to pay fees and fines associated with the criminal legal process (Liu, et al., 2018).
35. In addition, if the detained person is a head of household, the negative impact of detention can also affect families. Although it did not distinguish between pretrial detention and post-conviction incarceration, a 2014 project that surveyed formerly incarcerated people and their family members across 14 states found that 2 of 3 families had difficulty meeting basic needs, including housing, as a result of a loved one's incarceration (Who Pays?, 2015).
36. I am also of the opinion that pretrial detention negatively impacts a person's future financial well-being. A recent study found that pretrial detention negatively affects defendant's income and employment. In their analysis of cases in Philadelphia and Miami-Dade counties, Dobbie and colleagues (2018) found that controlling for case and demographic factors, initially released defendants (those released within the first three days) have significantly higher earnings and formal sector employment. Initially released defendants were 11.3% more likely to have employment two years after their bail hearing. And three to four years after their hearing, they were 9.4% more likely to be employed in the formal labor sector than those who were held in pretrial detention. In addition, during the same time period, released defendants, on average, had annual earnings \$948 higher, were more likely to file a tax return, and were more likely to benefit from Unemployment Insurance or the Earned Income Tax Credit. The authors concluded that these long-term negative outcomes can be attributed to the increased likelihood of being convicted among those who are detained pretrial. What this means is that the negative employment consequences of having a criminal conviction (Agan & Starr, 2018), which is more likely if a defendant is detained pretrial, explain these worse employment outcomes.
37. In a 2021 working paper that analyses the same data, again using rigorous methods, Dobbie and Yang (2021) found that "individuals lose an average of \$29,000 over the course of the working-age life cycle when detained in jail for just three days while

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awaiting the resolution of their criminal cases.” They also found a negative impact on families and communities. Using county-level data, they show that as county pretrial detention rates increase, county poverty and employment rates increase: “a 10 percentage point increase in county pretrial detention rates between 2000 and 2009 is associated with a 1.41 percentage point increase in county poverty rates and a 2.06 percentage point decrease in county employment rates.”

### Community Safety

38. Further, pretrial detention increases the risk to community safety, through future criminal involvement. A growing body of research finds that, controlling for other relevant demographic and case-related factors, people who are detained pending trial are more likely to be charged with new offenses than released defendants. In their study of pretrial detention in Harris County, Texas, Heaton et al. (2017) found that detention for at least 7 days increased the share of defendants charged with new felonies by 32.2% eighteen months post-hearing. Over the same period, the likelihood of any future misdemeanors increased by 9.7%. Similarly, in their study of pretrial detention in Kentucky in 2009-10, Lowenkamp and colleagues (2013b) found that defendants of all risk levels who were detained for the entire pretrial period were 1.3 times more likely to be arrested for new criminal activity, both 12- and 24-months post-disposition, than those who were released. Finally, Dobbie and colleagues (2018) found that after case disposition, initially released defendants (those released within three days) were significantly less likely to be charged with a new offense than detained defendants.

## **VII. Opinion D: Pretrial detention for time periods of at least 24 hours has an adverse effect on the likelihood that a person will remain law-abiding during the pretrial period and has no consistent effect on the likelihood that an individual will fail to appear.**

39. The research addressing this issue suggests 1) that pretrial detention for 24 hours or more increases the likelihood that a person will be arrested for new criminal activity and 2) that pretrial detention for 24 hours or more does not have a clear effect on the likelihood that individuals will make their court appearances while on pretrial release.
40. *New Criminal Activity:* In their study of the costs of pretrial detention, Lowenkamp and colleagues (2013b) examined the relationship between length of pretrial detention and both new criminal activity and failures to appear. Using multivariate regression analysis and controlling for the effects of case and demographic factors, they found that pretrial detention was associated with an increase in the likelihood of rearrest during the pretrial period. Specifically, they found that the longer low- and moderate-risk defendants were detained, the more likely they were to have

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new criminal activity before trial. A later study examining data from 2009-2018 (Arnold Ventures, 2022) confirmed this finding, concluding that spending 24 hours or more in pretrial detention increases the likelihood of rearrest.

41. On the other hand, the same Kentucky studies had mixed results with respect to the effect of pretrial detention on failures to appear. The 2013 study found that defendants who were detained two-to-three days pretrial were slightly more likely to fail to appear for a court appearance than defendants who were detained for 1 day. However, the effect was small, and the follow-up study from 2022 concluded that there was no consistent relationship between pretrial detention and failures to appear (Arnold Ventures, 2022). In another study of pretrial detention in New Orleans, Louisiana, Monaghan and colleagues (2022) found that, although the effect size was small, controlling for demographic factors and offense information, the number of days an individual is detained before release raises the odds of a failure to appear.

**VIII. Opinion E: There is no empirical evidence that secured money bail is more effective than unsecured money bail or non-monetary conditions at assuring public safety and law-abiding behavior.**

42. With respect to public safety, it is my opinion that money bail does not protect public safety and, surprisingly, seems to be criminogenic, meaning that it may actually lead to more crime. First, money bail leads to pretrial detention, and as discussed above, defendants detained pretrial are more likely to commit new offenses than released defendants. Second, research by Gupta and colleagues (2016) who conducted a rigorous quasi-experimental study of criminal cases in Philadelphia based on the random assignment of judges found that the assignment of money bail led to a 4.3% increase in the likelihood of being charged with a new offense, 6 months after arraignment. Finally, as discussed below, compared with other release types, there is *no* evidence that money bail keeps the public safer during the pretrial period.
43. First, using data from 1900 defendants in 10 Colorado counties in 2008-09, Jones (2013) found that regardless of risk level, there were no statistically significant difference in the likelihood of being charged with a new crime between defendants released on secured money bonds and those released on unsecured bonds (where a monetary amount is set but which defendants do not need to pay up front; they agree to forfeit this amount if they fail to appear). Second, in a recent study of New Orleans defendants arrested in 2019, Monaghan and colleagues (2022) found that, controlling for demographic factors and offense information, being released without money bail does not increase the likelihood of being arrested while awaiting trial. Finally, Ouss and Stevenson (2022) in their recent working paper examining the

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impact of the No-Cash-Bail policy in Philadelphia, Pennsylvania, found no increase in pretrial crime comparing cash bail with pretrial supervision.

**IX. Opinion F: Most empirical evidence shows that secured money bail is no more effective than unsecured money bail or non-monetary conditions of release at assuring appearance in court.**

44. It is my opinion that secured money bail is no more effective a way to assure a person's appearance in court than unsecured money bail or non-monetary conditions of release. There is simply no evidence to support the idea that a defendant needs a monetary incentive to show up at court. I base this opinion on the lack of evidence that secured money bail increases appearance rates combined with the increasingly strong evidence that low-cost court notification programs can increase already high appearance rates (Ferri 2020, Fishbane et al. 2020).
45. Most studies find no differences in appearance rates based on type of pretrial release. For example, two studies in Colorado suggest that secured money bonds do not increase appearance rates. First, in the Colorado study described above, Jones (2013) compared appearance rates for defendants released on secured money bonds with those released on unsecured bonds. He found no statistical differences in appearance rates for the two groups. Similarly, Brooker and colleagues (2013), in their quasi-experimental study of appearance rates in Jefferson County, Colorado, found no statistically significant differences in court appearance rates for defendants released on unsecured bonds compared with those released on secured money bonds.
46. More recently, in an evaluation of a supervised release program in Orange County, California, Barr o and colleagues (2020) found that individuals who received supervised release without financial conditions were significantly *less* likely to fail to appear than those released on cash bail. Further, a recent report from the New York Criminal Justice Agency showed a slight *increase* in appearance rates for defendants released on their own recognizance – up from 84% to 86% – even as the number of recognizance releases increased and the number of people released on money bail declined (Fox & Koppel, 2019).
47. Similarly, Ouss and Stevenson (2022) found no increase in failures to appear as a result of the reduction in the use of money bail in Philadelphia, PA, and after the virtual elimination of money bail in New Jersey, court appearance rates have remained consistently high – 89.9% in 2018 and 90.9% in 2019 (Grant, 2020).
48. At the same time, court notification programs have been shown in a variety of jurisdictions to increase appearance rates without imposing additional pretrial release conditions. Indeed, these programs have a strong track record of success,

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which stands in stark contrast to money bail. For example, the study in Jefferson County, Colorado, discussed above, found that a phone call reminding defendants about their court dates reduced the failure to appear rate from 21% to 12% (Brooker, et al.).

49. Most recently in New York, two randomized control trials studied court reminders. The first study examined reminder phone calls and found that when individuals who received desk appearance tickets also received reminder phone calls, they were more likely to appear in court. The reminder phone calls reduced the failure to appear rate by 37% (Ferri, 2020). The second study concluded that among individuals who received a summons, those who received a reminder text message, were more likely to appear in court. The most effective strategy in this study involved two reminder text-messages, and reduced failures to appear by 26% (Fishbane, et al., 2020).

**X. Opinion G: The bail schedule is an important factor considered by judges in determining pretrial release conditions in Los Angeles County.**

50. To my knowledge, there is just one empirical study examining the impact of bail schedules on pretrial release decisions in LA County, which I conducted. In this study, which relied on qualitative court observations of 233 felony arraignment hearings in Los Angeles and Orange County in 2016, supplemented by a small number of interviews with judges and defense attorneys, we found that the bail schedule was the most important factor considered by judges (Scott-Hayward & Ottone, 2018). In most cases, judges set bail according to the county schedule without opposition from defense attorneys, and in most of the cases where there was a request to lower bail, judges typically denied these requests without comment. As one of the attorneys that we interviewed stated, "in 99 out of 100 cases the court will follow the schedule."

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Dated:  
November 12, 2022

*Christine Scott-Hayward*

Christine S. Scott-Hayward, Ph.D.

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1 Additional Plaintiffs' Counsel:

2 ROWLEY J. RICE (SBN 313737)  
3 Rowley.Rice@mto.com  
4 TIANA S. BAHERI (SBN 330835)  
5 Tia.Baheri@mto.ccm  
6 BRIANNE HOLLAND-STERGAR\*  
7 Brianne.Holland-Stergar@mto.com  
8 MUNGER, TOLLES & OLSON LLP  
9 350 South Grand Avenue, Fiftieth Floor  
10 Los Angeles, California 90071-3426  
11 Telephone: (213) 683-9100  
12 Facsimile: (213) 687-3702

SALIL H. DUDANI (SBN 330244)  
salil@civilrightscorps.org  
9861 Irvine Center Dr,  
Irvine, CA 92618  
CIVIL RIGHTS CORPS  
Telephone: (202) 844-4975  
Facsimile: (202) 609-8030

9 PAUL L. HOFFMAN (SBN 71244)  
hoffpaul@aol.com  
10 JOHN C. WASHINGTON (SBN 315991)  
11 jwashington@sshhlzlaw.com  
12 SCHONBRUN, SELOW, HARRIS,  
13 HOFFMAN & ZELDES, LLP  
14 200 Pier Ave., Suite 226  
15 Hermosa Beach, CA 90254  
16 Telephone: (424) 297-0114  
17 Facsimile: (310) 399-7040

14 *\*Pro Hac Vice applications forthcoming*

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